



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

February 18, 1992

**Mr. Norman J. Gordon  
Attorney At Law  
Diamond, Rash, Leslie,  
Smith & Samaniego  
First City Bank Building, 7th Floor  
300 East Main  
El Paso, Texas 79901-1379**

**Open Records Decision No. 601**

**Re: Whether the El Paso Housing  
Finance Corporation is a governmental  
body under the Texas Open Records  
Act (RQ-2168)**

**Dear Mr. Gordon:**

As counsel for the El Paso Housing Finance Corporation (the corporation), you ask whether the corporation is a governmental body for purposes of the Open Records Act, article 6252-17a, V.T.C.S. The corporation was created under the authority of Local Government Code chapter 394, which authorizes local governments "to create and use public nonprofit corporations," Local Gov't Code § 394.002(d), "to provide a means to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of local governments," *id.* subsec. (a).<sup>1</sup> The corporation has received a request for information, but contends that it is not covered by the Open Records Act. We conclude that the corporation is a governmental body under the Open Records Act, and must therefore comply with the request.

Section 2(1) of the act includes the following definition of a governmental body:

(G) the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds. Public funds as used herein shall mean

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<sup>1</sup>Such a corporation "may issue bonds and carry out the public purposes for which it is incorporated on behalf of and for the benefit of the general public, the local government, and this state." Local Gov't Code § 394.015(d).

funds of the State of Texas or any governmental subdivision thereof.

Our inquiry thus focuses on the character of the funds supporting the corporation or expended by it.<sup>2</sup> Chapter 394 contains several provisions dealing with the status and disposition of funds and property held by corporations created under it. Most significantly, "The housing finance corporation, all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds" are exempt from state and local taxes as "public property used for public purposes." Local Gov't Code § 394.905. The net earnings of the corporation, if any, "shall be paid to the local government." *Id.* § 394.023(b). Furthermore, upon dissolution of the corporation, which may be accomplished by the governing body at its sole discretion, "title to all funds and property owned by the corporation at the time of dissolution *vests in the local government*" and "shall be promptly delivered" to it. *Id.* § 394.026(b) (emphasis added).

Given these provisions, we determine that funds held by the corporation (such as those raised by the collection of fees from applicants) are public funds, belonging to the corporation's sponsoring local government. As we have been informed that the corporation employs these funds to meet its costs, we find that the corporation is supported by public funds.<sup>3</sup> Therefore, a housing finance corporation created pursuant to Local Government Code chapter 394 fits within the definition of a governmental body under section 2(1)(G) of the Open Records Act.

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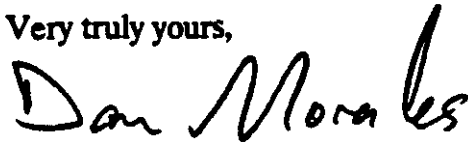
<sup>2</sup>You argue in your brief that our decision that a Health Facilities Development Corporation is not a governmental body for purposes of the Open Meetings Act, Attorney General Opinion JM-794 (1987), should influence our decision here because the two corporations are "similarly composed." Your argument fails to consider that the definitions of a governmental body differ under the Open Records and Open Meetings Acts. The Open Meetings Act does not contain a provision analogous to section 2(1)(G) of the Open Records Act.

<sup>3</sup>See Open Records Decision No. 268 (1981). You have shown us that the corporation receives a variety of fees from applicants, whom we understand to be developers of residential housing for persons of low to moderate income. For example, each applicant must pay a \$1000 non-refundable processing fee when filing an application. Additionally, each applicant whose financing has been completed must pay a proportion of the corporation's costs and expenses. El Paso Housing Finance Corporation, Local Regulations for Receiving and Approving Applications for Financial Participation in Residential Development Projects.

**SUMMARY**

The El Paso Finance Corporation is a governmental body under section 2(1)(G) of the Texas Open Records Act.

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

**DAN MORALES**  
Attorney General of Texas

**WILL PRYOR**  
First Assistant Attorney General

**MARY KELLER**  
Deputy Assistant Attorney General

**JUDGE ZOLLIE STEAKLEY (Ret.)**  
Special Assistant Attorney General

**RENEA HICKS**  
Special Assistant Attorney General

**MADELEINE B. JOHNSON**  
Chair, Opinion Committee

Prepared by Faith Steinberg  
Assistant Attorney General